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KOPERASI JIMAT-CERMAT DAN PINJAMAN KERETAPI BHD

v.

KUMAR GURUSAMY

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HIGH COURT MALAYA, KUALA LUMPUR
MOHAMAD ARIFF YUSOF JC
[ORIGINATING MOTION NO: R3(1)-25-110-2004]
2 APRIL 2009

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UNINCORPORATED ASSOCIATIONS: *Societies - Co-operative society - Decision of Tribunal to reinstate a member who had not paid dues for two months consecutively - Appeal against - Members contractually bound by Bylaws - Rules of natural justice - Whether applicable - Expressio unius est exclusion alterius*

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This was the appellant's appeal against the award of the Cooperative Societies Tribunal ("the Tribunal"). The basis of the appeal was that the Tribunal erred in law and in fact in coming to its decision that the respondent should be reinstated as a member of the Koperasi Jimat-Cermat dan Pinjaman Kereta Api Berhad, the appellant, although the Tribunal had found in effect that the respondent had not paid his dues (subscriptions and loan instalments) to the appellant for more than two months consecutively. It was the appellant's contention that this failure to pay the dues fell foul of Bylaw 19(g) such that he suffered a loss of qualification to remain a member thereby. The main issue that arose was whether the rules of natural justice were applicable even when the appellant relied on Bylaw 19(g), and although it was established that the respondent had failed to pay his monthly subscriptions and loan repayments for two consecutive months in breach of the appellant's regulations.

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Held (allowing the appeal):

(1) The rules of natural justice (in this respect, the right of hearing) did not apply where action was taken under Bylaw 19(g) of the Bylaws of the cooperative. The dispute concerned an issue of law on what was the proper construction of Bylaw 19(g), read in the total context of the Bylaws of the cooperative, and an appreciation of the status of the appellant as a thrift and loan cooperative made up of members who were contractually bound mutually by the Bylaws. (para 7)

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(2) On the facts of this appeal the maxim *expressio unius est exclusio alterius* applied. Essentially, where the Bylaws expressly provides for the application of natural justice principles in one situation, but not in another, the rules of the construction require that in the latter situation, the intention must be that natural justice principles do not apply. On a proper construction of Bylaw 19(g), therefore, no right of hearing was required before a member was removed by the appellant's board where the member had lost his qualification because he had failed to pay dues owing to the cooperative for two continuous months. (paras 11 & 12)

(3) The decision challenged in this appeal was the decision of the Board of the appellant, and it would not be correct to allow the Board to ignore the clear wording of Bylaw 19(g). The prejudice or injustice, if any, resulted from the conduct of the respondent himself in failing to comply with his obligations to pay the dues as required under the Bylaws. (para 15)

(4) The Tribunal had committed an error of law in failing to apply a correct principle of interpretation, and in failing to sufficiently consider the effect of Bylaw 19(g) read together with Bylaw 20(2). (para 16)

Case(s) referred to:

Charan Dass Sadhu Ram v. YM Tengku Abdul Aziz & Ors [2006] 5 CLJ 617 HC ***(refd)***

Raja Servai SHS Iyadorai v. Tengku Abdul Aziz Ibrahim & Ors [2005] 6 CLJ 443 HC ***(refd)***

S Kulasingam & Anor v. Commissioners of Land, Federal Territory & Ors [1982] CLJ 65; [1982] CLJ (Rep) 314 FC ***(refd)***

Singapore Island Country Club v. Brown [1994] 3 SLR 206 ***(refd)***

Legislation referred to:

Co-operative Societies Regulations 1995, r. 20

For the appellant - K Shanmuga; M/s Kanesalingam & Co

For the respondent - Datuk N Chandran (Ranjan Chandran with him); M/s Ranjan Chitravathy & Nik

Reported by Suhainah Wahiduddin

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JUDGMENT

Mohamad Ariff Yusof JC:

Introduction

B **[1]** This was an appeal filed by the appellant against the award of the Cooperative Societies Tribunal ("the Tribunal") dated 17 May 2004. The basis of the appeal was that the Tribunal erred in law and in fact in coming to its decision that the respondent should be reinstated as a member of the Koperasi Jimat-Cermat dan C Pinjaman Kereta Api Berhad, the appellant, although the Tribunal had found in effect that the respondent had not paid his dues (subscriptions and loan instalments) to the appellant for more than two months consecutively on or about October 1997. It was the appellant's contention that this failure to pay the dues fell foul of D Bylaw 19(g) such that he suffered a loss of qualification to remain a member thereby.

This Court's Decision

[2] I allowed the appellant's notice of originating motion E (encl. 1) and granted the orders in terms of prayer (1) therein that the whole of the award of the Cooperative Societies Tribunal made on 17 May 2004, No: T-90-2000 be set aside and prayer (2) that the cost of this appeal and the costs of the reference to the Tribunal be paid by the respondent to the appellant, to be taxed F unless agreed.

The Tribunal's Findings

[3] It was the respondent's (the applicant before the Tribunal) case before the Tribunal that the termination of his membership by G virtue of Bylaw 19(g), on the ground that he had not paid his dues for two consecutive months, was unjustifiable since he was not given the opportunity to be heard and therefore contravened the rules of the cooperative.

[4] For the appellant (who was the respondent before the H Tribunal), it was argued that the failure by the respondent to pay the monthly subscriptions and/or his loan repayments for two consecutive months in October 1997 *ipso facto* resulted in a loss of his membership in the cooperative under Bylaw 19(g). By this argument, the membership of the appellant had been terminated by I operation of law and not by reason of any decision by the Board of the appellant under Bylaw 22 or reg. 20 of the Peraturan-Peraturan

Koperasi 1995. As such, there was no requirement for the appellant to hear the respondent since the appellant had no choice except to regard the membership of the respondent as terminated by operation of law.

[5] The Tribunal found, and I quote:

> Tribunal mendapati tiada sebarang prosiding telah dijalankan oleh pihak responden yang menghendaki pemohon diberi peluang untuk didengar. Penentuan bahawa pemohon telah gagal menjelaskan sebarang bayaran bagi tempoh dua (2) bulan berturut-turut dibuat secara teknikal berdasarkan rekod-rekod responden yang tertakluk pada pemeriksaan Juruaudit dan pandangan Ketua Pendaftar Koperasi di bawah Akta Koperasi 1993 dan juga Undang-Undang Kecil (the Bylaws) responden. Keputusan bahawa Pemohon telah hilang kelayakan sebagai anggota pula dibuat secara pentadbiran menurut Undang-Undang Kecil 19(g) berdasar kepada kegagalan tersebut. (at p. 8 of the decision)
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> Tuntutan pemohon supaya diletakkan kembali pada kedudukan asalnya sebagai anggota yang berhak dan berkewajipan layak dipertimbangkan. Tuntutan ganti ruginya tidak layak dipertimbangkan kerana tiada keterangan yang menunjukkan pemohon telah menanggung kerugian dari apa segi jua pun, akibat kehilangan kelayakannya sebagai anggota yang berpunca dari kegagalannya sendiri atau akibat kesilapan pihak responden mengisytiharkan dia terhenti daripada menjadi anggota. (at p. 9)

The Issues

[6] The main issue before the Tribunal, and likewise the primary issue in this appeal, was whether the rules of natural justice were applicable even when the appellant relied on Bylaw 19(g), and although it was established that the respondent had failed to pay his monthly subscriptions and loan repayments for two consecutive months in breach of the appellant's regulations.

Reasons For This Court's Decision

[7] After hearing extended submissions by counsel for the appellant, Mr K Shanmuga, and counsel for the respondent, Datuk N Chandran, I agreed with the appellant's contention that the rules of natural justice (in this respect, the right of hearing) did not apply where action was taken under Bylaw 19(g) of the Bylaws of the cooperative. The dispute concerned an issue of law on what was the proper construction of Bylaw 19(g), read in the total context of

A the Bylaws of the cooperative, and an appreciation of the status of the appellant as a thrift and loan cooperative made up of members who are contractually bound mutually by the Bylaws. To quote Bylaw 19(g):

B Seseorang anggota akan hilang kelayakan sebagai anggota jika ... dia:

...

(g) tidak menjelaskan bayaran bayaran atau kekurangan atas bayaran kepada yuran atau pinjaman atau sebarang bayaran yang haus dibayar kepada koperasi bagi tempoh dua bulan berturut-turut.

C In this connection, Bylaw 20(2), which provides the following, becomes very pertinent:

Lembaga hendaklah menyingkir seseorang anggota yang:

D (b) Menurut Peraturan 11 Peraturan, hilang kelayakan sebagai anggota di bawah undang-undang kecil 19 ...

[8] It speaks of "menyingkir" as opposed to "dibuang". The latter term appears in Bylaw 20(1), which reads:

E Keanggotaan seseorang anggota terhenti atas sebab-sebab di bawah ini, mengikut mana yang berkenaan:

(a) Mati

(b) Menarik diri mengikut Undang-undang Kecil 21;

F (c) Dibuang mengikut Undang-undang Kecil 22.

[9] The side-heading to Bylaw 22 refers to "Pembuangan oleh Mesyuarat Agung Perwakilan", and this particular Bylaw refers to various instances of misconduct, which call for separate treatment. G In such instances, the member may find his membership suspended by the Board, but every such suspension must be preceded by a right of hearing in writing. Further, the decision by the Board must next be presented before the "Mesyuarat Agung Perwakilan". And it is expressly provided that before confirming the suspension or setting it aside, the member must be heard, and he cannot be H expelled unless two thirds of the delegates vote in favour. See Bylaw 22(2), (3) and (4).

[10] Bylaw 22 and Bylaw 20(1) concern the situation of "expulsion" ("dibuang") as opposed to Bylaw 20(2) read in I conjunction with Bylaw 19(g) which concerned "removal" ("menyingkir"). In the first situation, the rules of natural justice apply expressly. In the second situation, the Bylaw is completely silent on any right of hearing.

[11] In deciding to allow the appeal, I found that on the facts of this appeal the maxim *expressio unius est exclusio alterius* applied. Essentially, where the Bylaws expressly provides for the application of natural justice principles in one situation, but not in another, the rules of construction require that in the latter situation, the intention must be that natural justice principles do not apply. Bylaw 22, which concern "expulsion" of members for specific disciplinary offences contains safeguards to ensure that any such expulsion must comply with rules of natural justice. These safeguards are very explicit. Bylaw 22(2) provides, for example, the following:

> Keputusan untuk menggantung keanggotaan seseorang ahli boleh dibuat oleh Lembaga hanya setelah anggota itu diberitahu secara bertulis mengenai kesnya dan diberi peluang untuk menyatakan sebab-sebab mengapa keanggotaannya tidak boleh digantung.

[12] On a proper construction of Bylaw 19(g), therefore, no right of hearing is required before a member is removed by the appellant's Board where the member has lost his qualification because he has failed to pay dues owing to the cooperative for two continuous months.

[13] On the authorities, rules of natural justice can be excluded either by clear words or by necessary intendment from the context. The principle as applied in *S. Kulasingam & Anor v. Commissioners of Land, Federal Territory & Ors* [1982] CLJ 65; [1982] CLJ (Rep) 314, applies here as well, although the factual contexts may be different: "... the courts should not fly in the face of a clearly evinced Parliamentary intention to exclude the operation of the *audi alteram partem* rule." That natural justice rules do not apply in some defined contexts has also been recognised in other Malaysian cases such as *Raja Servai SHS Iyadorai v. Tengku Abdul Aziz Ibrahim & Ors* [2005] 6 CLJ 443 and *Charan Dass Sadhu Ram v. YM Tengku Abdul Aziz & Ors* [2006] 5 CLJ 617. The Singapore Court of Appeal case, *Singapore Island Country Club v. Brown* [1994] 3 SLR 206, likewise is added persuasive authority for this proposition. In the *Singapore Island Country Club* case, it was held that a member ceased his membership automatically when he fell into arrears of subscription. The outcome is not unlike the situation in this appeal. Counsel for the appellant was right to emphasise the character of the appellant as a cooperative society in the nature of a friendly loan and thrift society, where members must be expected to be punctual in their payment of dues. This imperative requires the rules and their enforcement to be strict. No injustice is caused

A by an exclusion of a right of hearing in this context. Where a member defaults on payment of dues for two consecutive months, he is deemed to suffer a loss of qualification, for which reason he can then be removed ("disingkir") from membership. He can of course reapply.

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Estoppel

[14] In the course of submission, Datuk N Chandran argued in favour of having the doctrine of estoppel applied on the facts of this case. The respondent was allowed to attend the regional meeting of C the cooperative, was in fact even invited to contest for a position at the regional meeting and ballot papers were given to him, and he was also paid director's fees for 1997 and 1998. Counsel argued the appellant by its conduct must be deemed to have waived the application of Bylaw 19(g), and the justice of the case required the D application of estoppel.

[15] The decision challenged in this appeal is the decision of the Board of the appellant, and it will not be correct to allow the Board to ignore the clear wording of Bylaw 19(g). The prejudice or injustice, if any, resulted from the conduct of the Respondent E himself in failing to comply with his obligations to pay the dues as required under the Bylaws.

Conclusion

F **[16]** By reason of the foregoing, I found that the Tribunal had committed an error of law in failing to apply a correct principle of interpretation, and in failing to sufficiently consider the effect of Bylaw 19(g) read together with Bylaw 20(2). Hence, I allowed the appeal with costs to be taxed, unless agreed.

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